

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

AUG 29 2016

UNITED STATES OF AMERICA

Case No. 5:96-cr-30056-1

JULIA C. DUDLEY, CLERK
BY: *[Signature]*
DEPUTY CLERK

v.

MEMORANDUM OPINION

PATRICK FLOYD WILSON,
Petitioner.

By: Hon. Michael F. Urbanski
United States District Judge

Patrick Floyd Wilson, a federal inmate proceeding pro se, filed a "Fed. R. Civ. P. 60(b)(3) Motion" that the court construes as a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. See United States v. McRae, 793 F.3d 392, 397 (4th Cir. 2015) ("[A] Rule 60(b) motion in a habeas proceeding that attacks the substance of the federal court's resolution of a claim on the merits" is not a true Rule 60(b) motion, but rather a successive habeas petition." (internal quotation marks omitted)). Court records indicate that the court already dismissed a prior § 2255 motion in Wilson v. United States, 7:02cv00805, by which Petitioner could have raised the instant challenge. Thus, the § 2255 motion is a second or subsequent motion under 28 U.S.C. § 2255(h). See, e.g., United States v. Hairston, 754 F.3d 258, 262 (4th Cir. 2014).

The court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that a claim in the motion meets certain criteria. See 28 U.S.C. § 2255(h). As Petitioner has not submitted any evidence of having obtained certification from the Court of Appeals to file a second or successive § 2255 motion, the court dismisses the § 2255 motion without prejudice as successive and accompanying motion to appoint counsel is denied as moot. Based upon the court's finding that Petitioner has not made the requisite substantial showing of denial of a constitutional right as required by 28 U.S.C. § 2253(c), a certificate of appealability is denied.

ENTER: This 29th day of August, 2016.

/s/ Michael F. Urbanski

United States District Judge